

DAVIS WRIGHT TREMAINE LLP

THOMAS R. BURKE (CA State Bar No. 141930)
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, California 94111
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
Email: thomasburke@dwt.com

AMBIKA K. DORAN (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98040
Telephone: (206) 757-8030
Facsimile: (206) 757-7030
Email: ambikadoran@dwt.com

BRENDAN CHARNEY (CA State Bar No. 293378)
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, Suite 2400
Los Angeles, CA 90017
Telephone: (213) 633-6800
Facsimile: (213) 633-6899
Email: brendancharney@dwt.com

Attorneys for Defendants
REVEAL FROM THE CENTER FOR
INVESTIGATIVE REPORTING;
MATT SMITH; and AMY WALTERS

IN THE UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF CALIFORNIA

PLANET AID INC., and LISBETH THOMSEN,

Plaintiffs,

v.

REVEAL, CENTER FOR INVESTIGATIVE
REPORTING, MATT SMITH, and AMY
WALTERS,

Defendants.

Case No. 17-cv-03695-MMC

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
SPECIAL MOTION TO STRIKE
PLAINTIFFS' COMPLAINT**

[Supporting Declarations And Exhibits
Thereeto Filed Concurrently]

Judge: Hon. Maxine Chesney
Date: November 9, 2018
Time: 9:00 a.m.
Location: San Francisco Courthouse
Courtroom 7 – 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

REQUEST FOR JUDICIAL NOTICE

In connection with their concurrently-filed Special Motion to Strike (“SLAPP Motion”), defendants Reveal from the Center for Investigative Reporting, Matt Smith, and Amy Walters (collectively, “Reveal”) hereby respectfully request that the Court take judicial notice of the existence and contents of the following documents pursuant to Rule 201 of the Federal Rules of Evidence:

A. Publications at Issue in the Law Suit

- a. Exhibits A-U to FAC;
- b. Online version of May 23, 2016 Article attached to FAC as Ex. B;
- c. Certified transcription of March 19, 2016 audio report by Reveal titled “Alleged Cult Leader Plays Shell Game With US Foreign Aid,” available at <https://www.revealnews.org/episodes/alleged-cult-leader-plays-shell-game-with-us-foreign-aid/>, attached as Exhibit JJ to The Declaration of Brendan N. Charney (“Charney Decl.”)

B. Court Documents

- a. Complaint for Provisional Arrest Warrant with a View Towards Extradition; Order Thereon, filed by U.S. Attorney John S. Gordon in Central District of California Case No. 02-316, *In re Extradition of Pedersen*, on February 18, 2002, attached as Exhibit EE to the Charney Decl.;
- b. Petersen’s Memorandum of Points and Authorities Re: Extradition Hearing; Declaration of Shapiro in Support Thereof, filed by Pedersen in Central District of California Case No. 02-2220, *In re Extradition of Pedersen*, on May 24, 2002, attached as Exhibit GG to the Charney Decl.;
- c. Excerpts from Petersen’s Submission of Declarations in Support of Memorandum of Points and Authorities Re: Extradition Hearing; Declaration of Shapiro in Support Thereof, Volume IV, filed by Pedersen in Central District of California Case No. 02-2220, *In re Extradition of*

Pedersen, on May 24, 2002 (*i.e.*, the declarations of Mikael Norling and Ester Neltrup), attached as Exhibit FF to the Charney Decl.;

- d. Case Summary as on 1 November 2001, provided by Poul Gade, deputy public prosecutor at the Public Prosecutor for Serious Economic Crime in Copenhagen, Denmark, to the U.S. Attorney in Los Angeles, attached as Exhibit A to the Declaration of Poul Gade (“Gade Decl.”);
- e. Statement for loan from The Federation for Associations Connected to the International HUMANA People to People Movement, attached as Exhibit B to the Gade Decl.;
- f. Corporate documents from Tvind’s foundation, Faellesje, evidencing loan of \$500,000 to Planet Aid, attached as Exhibit C to the Gade Decl.;
- g. Letter obtained from Tvind computers, and filed as part of the Danish prosecution of Pedersen, set forth at pages 3622-3625 of Exhibit D to the Gade Decl.;
- h. Organization chart included in Danish prosecution of Pedersen, attached as Exhibit E to the Gade Decl.;
- i. Letter from Tvind leaders Pedersen and Kristen Larsen, obtained from Danish police searches of Tvind and included in the Prosecutor’s Brief submitted in the Danish court proceedings, attached as Exhibit F to the Gade Decl.;
- j. Excerpts of Danish court records from the prosecution of Pedersen, attached as Exhibit G to the Gade Decl.;
- k. Danish court document describing Lisbeth Thomsen (then going by the name Lisbeth Hansen) as responsible for Hope Malawi, attached as Exhibit E to the Declaration of Matt Smith (“Smith Decl.”)

C. Government Documents

- a. FBI report, obtained by Matt Smith through a Freedom of Information Act (“FOIA”) Request to the FBI, attached as Exhibit C-1 to the Smith Decl.;

- b. Email from Delphine Hamlin at the USDA to Leonard Kreitzberg and Maureen La Piana dated February 17, 2006, Subject Troubling News – Planet Aid – USDA, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-2 to the Smith Decl.;
- c. Email from Jaime Fisher to Jared Burnett dated July 19, 2012, Subject Planet Aid Investigation, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-2 to the Smith Decl.;
- d. Email from Jamie Fisher to Vincent Fusaro dated August 21, 2012, Subject Report Follow up Inquiry, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-2 to the Smith Decl.;
- e. Handwritten meeting notes dated February 24, 2006 regarding Planet Aid, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-2 to the Smith Decl.;
- f. Handwritten meeting notes dated March 3, 2006 regarding Planet Aid, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-2 to the Smith Decl.;
- g. Email from Marie Lichtenberg to Brian Dutoi, undated, Subject visit, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-2 to the Smith Decl.;
- h. Agreement Between The Government of the United States of America and Planet Aid, Inc. for the Supply of Agricultural Commodities Under the Food for Progress Act, No. FCC-612-2009/008-00, dated June 18, 2009, obtained by Matt Smith through a FOIA Request to the U.S. Department of Agriculture (“USDA”), attached as Exhibit C-3 to the Smith Decl.;
- i. Agreement Between The Government of the United States of America and Planet Aid, Inc. for the Supply of Agricultural Commodities Under the Food for Progress Act, No. FCC-612-2006/092-00, dated June 6, 2006,

obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-3 to the Smith Decl.;

- j. USDA Logistics & Monetization Report of Planet Aid, Inc., from April 1, 2009 to September 30, 2009, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-3 to the Smith Decl.;
- k. USDA Logistics & Monetization Report of Planet Aid, Inc., from April 1, 2011 to September 30, 2011, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-3 to the Smith Decl.;
- l. USDA Logistics & Monetization Report of Planet Aid, Inc., from October 1, 2013 to March 31, 2013, obtained by Matt Smith through a FOIA Request to the USDA, attached as Exhibit C-3 to the Smith Decl.;
- m. Planet Aid's Application for Certificate of Authority filed with the Kentucky Secretary of State on February 16, 1999, obtained by Matt Smith through a FOIA Request to the Kentucky Secretary of State, attached as Exhibit D to the Smith Decl.

D. News Articles and Press Reports

- a. Article entitled *A wolf in sheep's clothing* by Dave Todd of Southam News, published in Edmonton Journal on November 14, 1993, and available on Westlaw at 1993 WLNR 2933015, attached as Exhibit A to the Charney Decl.;
- b. October 30, 1998 article published by the Irish Times titled *HOME NEWS Irish-located charity was investigated in Britain*, attached as Exhibit B to the Charney Decl.;
- c. Article entitled "*Tvind på storstilet tøj-offensiv i USA*" published in Danish newspaper Berlingske in 2000 along with a certified English translation, attached as Exhibit C to the Charney Decl.;

- d. December 17, 2000 article published by the Independent on Sunday (UK) by Michael Durham titled *Charity's recycling claims mislead public*, attached as Exhibit D to the Charney Decl.;
- e. June 5, 2001 article by Michael Durham published by the Independent (UK) titled *Wanted cult chief on run in UK say Danish fraud squad*, attached as Exhibit E to the Charney Decl.;
- f. April 7, 2002 article by George Hesselberg published by the Wisconsin State Journal titled *Recycling Group Meets Resistance*, attached as Exhibit F to the Charney Decl.;
- g. Article entitled "Planet Aid's Charity Work Draws Worldwide Scrutiny" by Farah Stockman, published in the Boston Globe on April 7, 2002, and available on Westlaw at 2002 WLNR 2560128, attached as Exhibit G to the Charney Decl.;
- h. May 11, 2003 article by "Answerman" titled *Decoding MD + VA + DC*, attached as Exhibit H to the Charney Decl.;
- i. February 13, 2004 article by Monica Eng and David Jackson published by the Chicago Tribune titled *Blurred Vision*, attached as Exhibit I to the Charney Decl.;
- j. November 5, 2006 article by Todd Milbourn published by The Sacramento Bee titled *Donor Bins Are Big Business: But The Nonprofit Collecting Clothes In The Area Has Ties To A Network That's Facing Worldwide Scrutiny*, attached as Exhibit J to the Charney Decl.;
- k. January 1, 2010 article by Tisha Thompson titled *Neighborhood clues*, attached as Exhibit K to the Charney Decl.;
- l. May 15, 2011 article by Monica Eng, published by the Chicago Tribune titled *Charity Drop-Off Box? Not Always. Controversial Groups, For-Profits Get In The Game*, attached as Exhibit L to the Charney Decl.;

- m. May 15, 2011 article by Monica Eng published in the Chicago Tribune, titled *Thriving In Face Of Controversy, Drop Off Boxes Tied To Danish Group Still Part Of U.S. Landscape*, attached as Exhibit M to the Charney Decl.;
- n. August 14, 2015 article by Kim Christensen published by the Los Angeles Times titled *A Good Intention, Or Public Nuisance? Cities Brace For A Resurgence Of Clothing Donation Bins In The Aftermath Of A Court Ruling That Has Some Rewriting Laws*, attached as Exhibit N to the Charney Decl.;
- o. Planet Aid press releases obtained from PRWeb, a repository of press releases, attached as Exhibit T to the Charney Decl.;
- p. April 29, 2001 article by Lars Roger Sorensen titled *Baggrund: Imperiet Tvind (Background: The Tvind Empire)*, attached as Exhibit A to the Smith Decl.;
- q. June 28, 2001 article by Thomas Buch-Andersen titled *Tvind gor gode forretninger I England (Tvind does good business in England)*, attached as Exhibit A to the Smith Decl.;
- r. Article entitled “DAPP UNDER PROBE” by Bright Sonani, published by the Malawi News on November 30-December 6, 2002, attached as Exhibit A to the Declaration of Kandani Ngwira (“Ngwira Decl.”);
- s. Article entitled “DAPP in ‘secret money swindling,’” published in an online publication called Nyasa Times on March 1, 2011, originally available at <http://www.nyasatimes.com/national/dapp-in-secret-money-swindling.html>, attached as Exhibit B to the Ngwira Decl.;
- t. Article entitled “‘Aid’ leads to bankruptcy in Malawi, Mozambique, Kenya,” published in an online publication called Nyasa Times on December 17, 2003, attached as Exhibit C to the Ngwira Decl.;
- u. Article entitled “DAPP named in ‘wicked’ scheme” by Charles Mpaka, published on May 14, 2016 by the Times Group at

<https://www.times.mw/dapp-named-in-wicked-scheme/>, attached as Exhibit D to the Ngwira Decl.;

- v. Article entitled “Memoirs from My Incarceration” written by Kandani Ngwira, published in the January 29-February 4, 2011 edition of the Malawi News, attached as Exhibit F to the Ngwira Decl.;
- w. Article entitled “Boc donates to village,” dated September 23, 1998, obtained from the Nation Publications Reference Library, attached as Exhibit G to the Ngwira Decl.;
- x. Article entitled “Dapp to open counselling centre” by Maxwell Zingani, dated February 14, 1999, attached as Exhibit H to the Ngwira Decl.;
- y. Article entitled “Wico assists Dapp’s Hope Humana project” by Russell Thipha, dated April 6, 1999, attached as Exhibit I to the Ngwira Decl.;
- z. Article entitled “Dapp presents report to Muluzi,” dated June 24, 2000, attached as Exhibit J to the Ngwira Decl.;
- aa. Article entitled “Dapp to build colleges” by Innocent Chitosi, dated November 11, 2000, attached as Exhibit K to the Ngwira Decl.;
- bb. Article entitled “Door-to-door HIV and Aids campaign changes lives” by Cecilia Kapalamula and George Mhango, dated March 21, 2012, attached as Exhibit L to the Ngwira Decl.;
- cc. Article entitled “Muluzi hails Dapp” by George Mhango, dated September 17, 2012, attached as Exhibit M to the Ngwira Decl.;
- dd. Article entitled “Standard Bank donates K12m to Dowa Dapp TTC” by Precious Chilundu, dated May 23, 2013, attached as Exhibit N to the Ngwira Decl.;
- ee. Article entitled “Dapp graduates 133 teachers at Chilangoma” by George Mhango, dated November 11, 2013. attached as Exhibit O to the Ngwira Decl.;

- ff. Article entitled “Dapp commended for economic empowerment programmes” by Christopher Jimu, dated October 12, 2017, attached as Exhibit P to the Ngwira Decl..

E. Social Media Pages and Posts

- a. Webpage from Humana People to People’s website titled “*who we are*” available at <http://www.humana.org/who-we-are>, attached as Exhibit O-1 to the Charney Decl.;
- b. Webpage from Humana People to People’s website titled “*Our Members*,” available at <http://www.humana.org/who-we-are/our-members>, attached as Exhibit O-2 to the Charney Decl.;
- c. Webpage from DAPP Malawi’s website titled “*Our History*” available at <https://www.dapp-malawi.org/history/our-history>, attached as Exhibit P to the Charney Decl.;
- d. Webpage from DAPP Malawi’s website titled “*Who We Are*” available at <https://www.dapp-malawi.org/who-we-are/who-we-are>, attached as Exhibit Q to the Charney Decl.;
- e. Webpage from Planet Aid’s website titled “*Humana People to People*” available at <https://planetaid.org/about/humana-people-to-people>, attached as Exhibit R to the Charney Decl.;
- f. Webpage from Planet Aid’s website titled “*Humana People to People Member Organizations*” available at <https://planetaid.org/about/humana-people-to-people/humana-people-to-people-members>, attached as Exhibit S to the Charney Decl.;
- g. Planet Aid’s facebook page, available at <https://www.facebook.com/Planet.Aid>, attached as Exhibit U-1 to the Charney Decl.;

- h. The “about” portion of Planet Aid’s facebook page, available at https://www.facebook.com/Planet.Aid/about/?ref=page_internal, attached as Exhibit U-2 to the Charney Decl.;
- i. Planet Aid’s facebook page when the user clicks on the “donate” button available at <https://donatenow.newworkforgood.org/PlanetAid>, attached as Exhibit U-3 to the Charney Decl.;
- j. Planet Aid’s facebook page promoting the fact that one of its clothes collection bins was featured on the television show “The Big Bang Theory”, available at <https://m.facebook.com/Planet.Aid/posts/304952082871640>, attached as Exhibit V-1 to the Charney Decl.;
- k. Frame from video clip from the television show “The Big Bang Theory” in which Planet Aid’s branding appears, available at https://www.youtube.com/watch?v=P6jlf1_A95Q&feature=youtu.be&app=desktop, attached as Exhibit V-2 to the Charney Decl.;
- l. Planet Aid’s Instagram page, available at www.instagram.com/planetaid/, attached as Exhibit W to the Charney Decl.;
- m. Planet Aid’s Twitter page, available at <https://twitter.com/planetaid1>, attached as Exhibit X to the Charney Decl.;
- n. Webpage of Planet Aid’s YouTube channel showing Planet Aid’s videos, available at <https://www.youtube.com/user/PlanetAidInc/videos>, attached as Exhibit Y to the Charney Decl.;
- o. Webpage of Humana People to People’s YouTube channel showing Humana People to People’s videos, available at www.youtube.com/user/HumanaPeopletoPeople/videos, attached as Exhibit Z-1 to the Charney Decl.;
- p. Frame from video on Humana People to People’s YouTube channel titled “DAPP Malawi celebrates a 20th Anniversary,” available at

<https://www.youtube.com/watch?v=icZfARAK6oQ>, attached as Exhibit Z-2

to the Charney Decl.;

q. Development Aid People to People Malawi's ("DAPP Malawi") facebook page available at www.facebook.com/THEDAPPMALAWI, attached as Exhibit AA to the Charney Decl.;

r. DAPP Malawi facebook posts containing photos or references to Lisbeth Thomsen, available at www.facebook.com/THEDAPPMALAWI, attached as Exhibit BB to the Charney Decl.;

s. DAPP Malawi's Twitter page, available at <https://twitter.com/dappmalawi>, attached as Exhibit CC to the Charney Decl.;

t. DAPP Malawi Tweets featuring Lisbeth Thomsen, available at <https://twitter.com/dappmalawi>, attached as Exhibit DD to the Charney Decl.

I. DOCUMENTS AND PUBLICATIONS REFERENCED IN THE FIRST AMENDED COMPLAINT ARE SUBJECT TO JUDICIAL NOTICE

In ruling on the Defendant's SLAPP Motion, the court may consider materials attached to and explicitly or implicitly referred to in the First Amended Complaint ("FAC") under the doctrine of "incorporation by reference." *In re Silicon Graphics Inc. Secs. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (in ruling on a motion to dismiss, court may consider documents "whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading") (alteration in original) (quoting *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)), *superseded by statute on other grounds*; *Knieval v. ESPN*, 393 F.3d 1068, 1076-1077 (9th Cir. 2005) (Rule 12 motion properly granted by considering web pages referred to in complaint and attached to defendant's motion). Such materials are subject to judicial notice under Federal Rule of Evidence 201. *See, e.g., In re Northpoint Commc'ns Group, Inc. Secs. Litig.*, 221 F. Supp. 2d 1090, 1095 (N.D. Cal. 2002); *In re Syncor Int'l Corp. Secs. Litig.*, 327 F. Supp. 2d 1149, 1156 (C.D. Cal. 2004) (same), *aff'd on other*

1 grounds, *rev'd on other grounds by In re Syncor Int'l Cop. Secs. Lit.*, 239 F. App'x 318 (9th Cir.
2 2007).

3 A document not attached to the Complaint is incorporated by reference if it “forms the
4 basis of the plaintiff’s claim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir.
5 2012) (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)). Documents not
6 “explicitly referenced in the Complaint,” but on which the Complaint “[i]mplicitly [r]elied” may
7 be considered as incorporated by reference “in order to prevent a plaintiff from surviving a Rule
8 12(b)(6) motion by deliberately omitting references to documents upon which their claims are
9 based.” *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003)

10 Here, Plaintiffs’ claims are based on statements in Defendants’ publications and broadcasts
11 identified as Ex. A-U to the FAC (the “Challenged Statements”). The full content of these
12 publications and broadcasts are subject to judicial notice.

13 In particular, the FAC refers extensively to Defendants’ May 23, 2016 article, which was
14 published online. *E.g.*, FAC ¶¶ 82, 111, 118, 123, 124, 131, 139, 149, 156, 165, 175, 197, 202,
15 203, 204, 205, 206, and Ex. B. The online version of this article incorporates numerous
16 hyperlinks to documents that Reveal posted online in order to provide readers an opportunity to
17 evaluate the facts for themselves. *See* [https://www.revealnews.org/article/us-taxpayers-are-](https://www.revealnews.org/article/us-taxpayers-are-financing-alleged-cult-through-african-aid-charities/)
18 [financing-alleged-cult-through-african-aid-charities/](https://www.revealnews.org/article/us-taxpayers-are-financing-alleged-cult-through-african-aid-charities/) . The printout attached to the FAC, however,
19 does not provide access to the hyperlinked documents. These hyperlinks—and the documents
20 they reference—are subject to judicial notice as they are inextricably linked to, and embedded in,
21 the May 23, 2016, article. *See Knievel*, 393 F.3d at 1076 (“Just as a reader must absorb a printed
22 statement in the context of the media in which it appears, a computer user necessarily views web
23 pages in the context of the links through which the user accessed those pages”).

24 Moreover, the FAC refers extensively to the Defendants’ March 19, 2016, radio broadcast,
25 *see e.g.* FAC ¶¶ 57, 58, and 101, and attaches a transcript of the recording obtained from Reveal’s
26 website. FAC Ex. P. That transcript, however, is a machine transcription that Reveal expressly
27 warned its audience is “*produced by a third-party transcription service and may contain errors.*
28 *Please be aware that the official record for Reveal's radio stories is the audio.*” FAC Ex. A

(emphasis in original). Under the doctrine of incorporation, the content of the audio broadcast is subject to judicial notice, and the Court may refer to this primary record to evaluate the Challenged Statements.¹

II. COURT DOCUMENTS ARE SUBJECT TO JUDICIAL NOTICE

Defendants relied on court records from the Danish prosecution and U.S. extradition of Amdi Petersen in investigating Planet Aid’s links to Tvind, Smith Decl. Ex. E, Charney Decl. Exs. EE-GG, Gade Decl. Exs. A-G , and the FAC challenges several statements that refer to these court records, *E.g.*, FAC ¶¶ 165, 206, and 221. The Court may take judicial notice of the existence and contents of these court records. *See, e.g., United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (“we ‘may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue’” (quoting *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979)); *accord Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002); *Jimenez v. Domino’s Pizza, Inc.*, 238 F.R.D. 241, 246 (C.D. Cal. 2006) (judicial notice of bankruptcy petitions); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (judicial notice of court filings in separate actions); *Schweitzer v. Scott*, 469 F. Supp. 1017, 1020 (C.D. Cal. 1979) (same).

The Court’s authority to take judicial notice of court documents extends to foreign proceedings. *See, e.g., In re Ex Parte Application of Jommi*, No. C 13-80212 CRB (EDL), 2013 WL 6058201, at *1 n.1 (N.D. Cal. Nov. 15, 2013) (taking judicial notice of “foreign court documents” from Switzerland); *Tahaya Misr Inv., Inc. v. Helwan Cement S.A.E.*, No. 216-cv-01001-CAS(AFMx), 2016 WL 4072332, at *1 n.3 (C.D. Cal. July 27, 2016), *appeal dismissed* (Sept. 7, 2016) (taking judicial notice of fact of filing of pleadings in Egyptian courts).

In libel cases, judicial notice of the existence and contents of documents that defendants relied upon in publishing challenged statements is appropriate, at minimum, “for the fact that they were filed and provided certain information to the public”—since a defendant’s reliance on

¹ For purposes of this litigation, and for the Court’s ease of reference, Reveal’s counsel has caused to be prepared a certified transcription of the March 19, 2016 radio broadcast, attached as Exhibit JJ to the Charney Decl.

1 credible information is relevant to a defense of lack of actual malice. *Wynn v. Chanos*, 75 F.
 2 Supp. 3d 1228, 1235, 1239-40 (N.D. Cal. 2014) (taking judicial notice of motion filed in separate
 3 court proceeding and plaintiff's financial disclosure forms, holding that existence and contents of
 4 documents demonstrated that defendant did not make allegedly defamatory statements knowingly
 5 or recklessly because defendant based his statements on "reliable information").

6 Here, Defendants request that this Court take judicial notice of court documents from
 7 proceedings in the U.S. District Court for the Central District of California to extradite Mogens
 8 Amdi Petersen (No. 02-cv-02220), Charney Decl. Exs. EE, FF, GG; as well as court documents
 9 from the related criminal prosecution of Teachers' Group leaders in Denmark for money
 10 laundering, embezzlement, and tax evasion. Gade Decl. Exs. A, D-G; Smith Decl. Ex. E.

11 By virtue of their filing in the Central District of California and/or in Danish Courts, the
 12 existence and contents of these documents is not subject to reasonable dispute and is capable of
 13 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
 14 questioned. Fed. R. Evid. 201. Judicial notice may be taken of, at minimum, the existence and
 15 contents of these documents, because Defendants reviewed this reliable information as part of
 16 their investigation before publishing the statements that Plaintiffs challenge in the FAC. Smith
 17 Decl. ¶¶ 10-11; Walters Decl. ¶ 29. Moreover, Danish court records showing that Planet Aid was
 18 involved in illegal financial transactions are subject to judicial notice for the independent reason
 19 that the FAC challenges Reveal's statements on this point. *E.g.*, FAC ¶¶ 165, 206; *Knievel*, 393
 20 F.3d at 1076-77; *Wietschner*, 294 F. Supp. 2d at 1109.

21 **III. JUDICIAL NOTICE OF GOVERNMENT DOCUMENTS IS APPROPRIATE**

22 Through FOIA requests for public records, Reveal investigated a 2001 FBI report about
 23 the links between Planet Aid and Tvind, and obtained USDA officials' emails discussing this
 24 report and other concerns about Planet Aid. Smith Decl. ¶ 8, Exs. C-1, C-2. Reveal also obtained
 25 reports by Planet Aid to the USDA containing representations concerning the results of the
 26 Farmers' Clubs. *Id.* ¶ 8, Ex C-3. Reveal published the FBI report and e-mails, noting that the
 27 USDA was aware of the 2001 FBI report, some of its officials called for an investigation, but
 28

ultimately kept funding Planet Aid. FAC Ex. B at 5-6, 9. Planet Aid challenges several of
 Reveal's statements about these records. FAC ¶¶ 170-176, 206, 221.

These records are subject to judicial notice as "public records of governmental entities," *In re Jommi*, at *1 n.1, and "records and reports of administrative bodies." *Ritchie*, 342 F.3d at 909 (quoting *Interstate Nat. Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir.1953)); *see also Jones v. Markiewicz-Qualkinbush*, 842 F.3d 1053, 1061 n.24 (7th Cir. 2016); *Buffets, Inc. v. Leischow*, 732 F.3d 889, 897 (8th Cir. 2013); *L'Garde, Inc. v. Raytheon Space & Airborne Sys.*, 805 F. Supp. 2d 932, 937-38 (C.D. Cal. 2011) ("public records and government documents are generally considered 'not to be subject to reasonable dispute'" (quoting *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-CV-1166-IEG (POR), 2009 WL 6597891, at *1 (S.D. Cal. Dec. 23, 2009)); *Jimenez*, 238 F.R.D. at 246 (judicial notice of award of labor commissioner and opinion letter of the Division of Labor Standards Enforcement).

Accordingly, Reveal requests that the Court take judicial notice of the existence and contents of the 2001 FBI report, which lists Planet Aid as one of the groups from which Tvind "derives income." *See* Smith Decl. Ex. C-1. This document is a government document obtained through FOIA. *Id.* Judicial notice also is appropriate of correspondence among USDA employees concerning Planet Aid and arising from this FBI report. These documents also were obtained through FOIA. *See* Smith Decl. Ex. C-2.

The existence and contents of these documents are not subject to reasonable dispute and are capable of accurate and ready determination by resort to a U.S. government source whose accuracy cannot reasonably be questioned. Defendants relied on these documents as part of their investigation, Smith Decl. ¶ 8—and incorporated many of them into its reporting as images or hyperlinks. *See, generally*, FAC Ex. B. As a result, these documents are subject to judicial notice. *See Wynn*, 75 F. Supp. 3d at 1235, 1239-40.

IV. JUDICIAL NOTICE MAY BE TAKEN OF NEWS ARTICLES AND PRESS REPORTS CONCERNING PREVIOUS REPORTING ABOUT PLAINTIFFS—AND PLAINTIFFS’ VOLUNTARY EFFORTS TO OBTAIN PUBLIC ATTENTION AND PROMOTE THEMSELVES

Courts can take judicial notice of press releases and news articles to “indicate what was in the public realm at the [relevant] time.” *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954, 960 (9th Cir. 2010) (quoting *Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt.*, 435 F.3d 396, 401 n.15 (3d Cir. 2006)); *United States v. Kane*, No. 2:13-cr-250-JAD-VCF, 2013 WL 5797619, at *9 (D. Nev. Oct. 28, 2013) (same); *Brodsky v. Yahoo! Inc.*, 630 F. Supp. 2d 1104, 1111–12 (N.D. Cal. 2009) (judicially noticing press releases, news articles, analyst reports, and third party press releases); *In re Homestore.com. Inc. Sec. Litig.*, 347 F. Supp. 2d 814, 816–17 (C.D. Cal. 2004) (stating that the court can take judicial notice of press releases).

It is appropriate to take judicial notice of such materials in determining whether an individual or entity is a public figure. *See Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 259 n.2 (9th Cir. 2013) (in the context of deciding whether an entity was a public figure, the court judicially noticed “newspaper and magazine articles, and web pages”) (citing *Von Saher*, 592 F.3d at 960). Therefore, judicial notice may be taken of Planet Aid’s press releases and promotional materials, as well as other articles showing Planet Aid and Lisbeth Thomsen’s public prominence (predating and independent to the controversy around the Challenged Statements). *See* Charney Decl. Exs. A-N, T-DD; Ngwira Decl. Exs. G-P. These show that Planet Aid and Lisbeth Thomsen each were public figures based on what was in the “public realm at the time” of publication.

As discussed above, it is also appropriate to notice press reports that a libel defendant relied on in reporting challenged statements. *See Wynn*, 75 F. Supp. 3d at 1235, 1239-40. Thus, articles by reputable media sources concerning reports of Planet Aid’s conduct and connections to Tvind—similar to those that Reveal reported—are judicially noticeable as evidence of what was in the public realm about Plaintiffs at the time of publication. *Von Saher*, 592 F.3d at 960; *see* Smith Decl. Ex. B; and Charney Decl. Exs. A-N. These articles are relevant to Defendants’ defense of

actual malice—since they show defendants’ knowledge of previous similar reports about Planet Aid. *See Wynn*, 75 F. Supp. 3d at 1235, 1239-40.

V. JUDICIAL NOTICE MAY BE TAKEN OF PLAINTIFF’S SOCIAL MEDIA PAGES AND CONTENT THEREIN

The court may also take judicial notice of Planet Aid and DAPP Malawi’s promotional social media pages, and certain public posts, photos, and videos contained therein, in determining whether Planet Aid and Lisbeth Thomsen are each public figures. *Makaeff*, 715 F.3d at 259 n.2; *Von Saher*, 592 F.3d at 960; *see* Charney Decl. Exs. O-1, O-2, P, Q, R, S, U-1, U-2, U-3, V-1, V-2, W, X, Y, Z-1, Z-2, AA, BB, CC, DD. These social media pages, posts, photos, and videos are publicly accessible, are not subject to reasonable dispute, and are therefore subject to judicial notice. *See, e.g., Cairns v. Franklin Mint Co.*, 107 F. Supp. 2d 1212, 1216 (C.D. Cal. 2000) (taking judicial notice of pages from Warhol Museum’s web site); *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965-66 (C.D. Cal. 2005) (taking judicial notice of Amazon.com web pages and web information on medical association’s website); *see also Austin v. Am. Ass’n of Neurological Surgeons*, 253 F.3d 967, 971 (7th Cir. 2001) (relying on information obtained from the Internet to reach conclusion); *Pollstar v. Gigmania Ltd.*, 170 F. Supp. 2d 974, 978 (E.D. Cal. 2000) (taking judicial notice of printout from plaintiff’s web site); *Signature Mgmt. Team, LLC v. Automattic, Inc.*, 941 F. Supp. 2d 1145, 1147-48 (N.D. Cal. 2013) (taking judicial notice of existence of blog postings, news articles, and Internet websites, which were “all readily verifiable by reference to the web addresses listed”).

Based on the foregoing, Reveal respectfully requests that the Court take judicial notice as requested herein.

DATED: July 2, 2018.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Thomas R. Burke
Thomas R. Burke

Attorneys for Defendants REVEAL FROM
THE CENTER FOR INVESTIGATIVE
REPORTING; MATT SMITH; and AMY
WALTERS